
(2002) 07 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 23535 of 2002

Government of India and Others

APPELLANT

Vs

Dhanu S. Rathod

RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeals) Rules, 1965 — Rule 19 (2)
Constitution of India, 1950 — Article 14, 16, 226, 311 (2)

Citation : (2002) ILR (Kar) 4911 : (2003) 1 KarLJ 364 : (2002) 4 KCCR 347 SN

Hon'ble Judges : R.V. Raveendran, J;Manjula Chellur, J

Bench : Division Bench

Advocate : Vishnu Bhat, for the Appellant; B.B. Bajentri, for the Respondent

Judgement

R.V. Raveendran

1. The respondent was working as a Trained Graduate Teacher under the Kendriya Vidyalaya Sanghathan which is stated to be an autonomous body registered under the Societies Registration Act, controlled by the Government of India. He was earlier working at Sanghathan's Kendriya Vidyalaya at Ponda and later posted to Kendriya Vidyalaya, Kudremukh.

2. On 24-5-2001 respondent was served with an order of termination dated 18/22-5-2001 passed by the second respondent (Commissioner of the Sanghathan) in exercise of power under Article 81(b) of the Education Code for Kendriya Vidyalayas, holding the respondent guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the students of the Kendriya Vidyalaya, Kudremukh. The said order reads thus:

"Whereas, Shri D.J. Rathode, Trained Graduate Teacher (Biology), Kendriya Vidyalaya, Kudremukh has been prima facie found guilty of moral turpitude involving sexual behaviour due to his indulgence in physical contact and advances towards the students of Kendriya Vidyalaya, Kudremukh and using abusive, and sexually coloured language with them.

Whereas, the undersigned is satisfied from the inquiry report of the Assistant Commissioner, Regional Office, Bangalore, letters of complaints from the teachers as well as students of the Kendriya Vidyalaya, Kudremukh that the said Shri D.J. Rathode is guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the students of Kendriya Vidyalaya, Kudremukh.

And whereas, the undersigned is further satisfied that the procedure of Central Civil Services (Classification, Control and Appeal) Rules, 1965, to hold regular inquiry is not expedient in this case as the same may cause serious embarrassment to the said students and their parents.

The evidence on record establish the guilt of the teacher and hence the continuance of the said Shri D.J. Rathode in a coeducational institution like Kendriya Vidyalaya is prejudicial to the interest of the students and the Vidyalaya.

Now, therefore, the undersigned, in the capacity of the Commissioner, K.V.S. in exercise of the powers under Article 81(b) of the Education Code of Kendriya Vidyalayas, hereby terminates the services of the said Shri D.J Rathode, T.G.T. (Biology), Kendriya Vidyalaya, Kudremukh with immediate effect.

Shri D.J. Rathode, T.G.T. (Biology), Kendriya Vidyalaya, Kudremukh will be paid pay and allowances for one or three months as the case may be as admissible under the rules".

3. Feeling aggrieved, respondent approached the Central Administrative Tribunal, Bangalore Bench, in O.A. No. 756 of 2001, seeking the following reliefs:

- (a) to strike down Article 8Kb) of the Education Code;
- (b) to quash the order of termination dated 18/22-5-2001; and
- (c) to quash the consequential order dated 24-5-2001, issued by the third petitioner, relieving the respondent of his duties.

The respondent, inter alia, contended as follows:

(a) Article 81(b) of the Kendriya Vidyalaya Education Code which provides for termination without a regular enquiry violates of Articles 14 and 16 of the Constitution and Rule 19(2) of the CCS (CCA) Rules, 1965, and is opposed to principles of natural justice, and therefore invalid.

(b) No employee of the Sanghathan could be terminated alleging gross misconduct without holding an enquiry, and any termination without enquiry is liable to be quashed.

(c) Even if Article 81(b) is valid and a regular enquiry is to be dispensed with, a summary enquiry ought to have been held and the employee should be made known about the allegations against him and the evidence on which the authority proposes to hold him guilty of any sexual offence or immoral several behaviour and giving the employee an opportunity to show cause.

(d) A false report has been given by the Chairman of the Kendriya Vidyalaya, Kudremukh by cooking up some alleged complaints, on account of his bias against the employee.

(e) The Commissioner (second petitioner) has failed to apply his mind while passing the order of termination and has mechanically repeated the words of Article 81(b) to terminate the service of the employee.

4. Petitioners herein contested the application. Petitioners have alleged that the Chairman of the Vidyalaya Management Committee, Kendriya Vidyalaya, Kudremukh, had sent a report alleging that the respondent herein had misbehaved with the students of the Vidyalaya, and used sexually coloured remarks against them; that the parents of the students made specific complaints against the respondent to the Vidyalaya; and that after conducting a preliminary enquiry, the fourth petitioner (Assistant Commissioner of the Kendriya Vidyalaya Sanghathan at Bangalore) had submitted a report confirming the allegation against the respondent. It is contended that in such circumstances there is no need to issue any show-cause notice to the employee concerned. It is stated that on the perusal of the preliminary enquiry report and the statements of parents of the students, the second petitioner applied his mind and concluded that the respondent was a perverted teacher and retention of such a person in a coeducational institution like Kendriya Vidyalaya will be hazardous and dangerous for the students; and that therefore the employment of the respondent were terminated by invoking the provisions of Article 81(b) of the Kendriya Vidyalaya Education Code by dispensing with a regular enquiry contemplated under Rule 19 of the CCS (CCA) Rules, 1965, as such an enquiry which will involve cross-examination of students or their parents would cause trauma and embarrassment to them and would vitiate the atmosphere of the school. It is contended that Article 81(b) is valid and the power vested in the Commissioner under Article 81(b) has been exercised bona fide and after considering the relevant material. It is also submitted that similar action taken by the Sanghathan under Article 8Kb), without holding an enquiry, have been upheld by several other Benches of the Central Administrative Tribunal.

5. The Sanghathan did not disclose any particulars of the incidents (that is, dates of incidents, names of complainants, nature of complaints, evidence gathered in the preliminary enquiry etc.) which led to the order under Article 81(b), to the employee, either in the order of termination or in its statement of objections. The respondent was not even given an opportunity to show cause. The stand of the management of the Vidyalaya (reiterated in para 9 of the writ petition) is:

"Issuance of a show-cause notice or observing the principles of natural justice is an empty formality where no different decision could be arrived at, even if an opportunity is given to the employee and a defence statement or objection is taken into consideration".

6. The Tribunal, by order dated 1-3-2002 allowed the respondent's application.

It held that no show-cause notice was issued to the employee, nor any explanation obtained, either before the fact-finding enquiry was undertaken, or before passing the order of termination; and as the basic requirements of principles of natural justice were not fulfilled, the order of termination could not be sustained. As a consequence, the Tribunal quashed the order of termination dated 18/22-5-2001, but reserved liberty to the petitioners herein to take such further action as it deemed fit as per law. It also reserved liberty to the respondent to challenge such action if it was prejudicial to his interest.

7. Feeling aggrieved by the said order, petitioners have filed this petition and sought quashing of the order of Tribunal and sought dismissal of O.A. No. 756 of 2001. On the contentions raised, the following points arise for determination:

(i) Whether Article 81(b) of the Education Code of Kendriya Vidyalayas is unconstitutional and invalid?

(ii) What is a "summary enquiry" as contrasted from a regular enquiry?

(iii) Whether the decision of the Tribunal that the order of termination dated 18/22-5-2001 is invalid, is correct?

8. Re: Point (i).--Article 81(b) of the Education Code, based on which, the service of respondent has been terminated, reads thus:

"Termination of services of an employee found guilty of immoral behaviour towards students,--Whether the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or 3 months' pay and allowances according as the guilty employee is temporary or permanent in the service of the Sanghathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with the CCS (CCA) Rules, 1965, as applicable to the employees of the Kendriya Vidyalaya Sanghathan, shall be dispensed with provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sanghathan informed of the circumstances leading to such termination of services".

9. Both sides placed reliance on the decisions of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, and *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*, , in support of their rival contentions regarding validity of Article 81(b).

10. *Tulsiram Patel's* case, *supra*, considered the scope of Article 311(2) which provides that no person who is a member of civil services shall be dismissed or

removed or reduced in rank, except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of said charges. Clause (b) of the second proviso to Article 311(2) however provides that Article 311(2) will not apply where the authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry. The petitioners rely on the conclusion reached by the Supreme Court that the second proviso to Article 311(2) withdrawing the protection given by Article 311(2), is necessary in public interest and for public good, and that it has been incorporated in the Article on the ground of public policy. The petitioners contend that Article 81(b) based on Clause (b) of the second proviso to Article 311(2) is also valid, being in public interest and for public good. The petitioners also relied on the following observations which explained the scope and effect of the second proviso and Clause (b) thereof:

"... the opening words of the proviso to Clause (2) (now the second proviso to that clause) namely, "provided farther that this clause shall not apply" would, where any of the three clauses of the said proviso applies, take away both the right to have an inquiry held in which the Government servant would be entitled to a charge-sheet as also the right to make a representation on the proposed penalty... The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned Government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of interference or implication... It was next submitted that though Clause (b) of the second proviso excludes an inquiry into the charges made against a Government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary enquiry the Government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with, so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a Government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable"

(emphasis supplied)

On the other hand, the respondent placed strong reliance on certain other observations in *Tulsiram Patel's* case, *supra*, which are extracted below:

"A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the Department's case against the Government

servant is weak and must fail....

It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of Clause (b) of the second proviso. For instance, it would be no compliance with the requirement of Clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances. . . If the reasons are not communicated to the Government servant and the matter comes to the Court, the Court can direct the reasons to be produced, and furnished to the Government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated".

(emphasis supplied)

The Supreme Court in *Tulsiram Patel*'s case, *supra*, also dealt with the scope of examination and interference in exercise of jurisdiction under Article 226 and held thus:

""Where a Government servant is dismissed, removed or reduced in rank by applying Clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the Court will interfere on grounds well-established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether Clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of *mala fides*, if any, made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by Clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary

authority the Court will not, however, sit in judgment over them like Court of first appeal. In order to decide whether the reasons are germane to Clause (b), the Court must put itself in the place of disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the Disciplinary Authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Courtroom, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere".

11. Tulsiram Patel's case, *supra*, makes it clear that the service rules of an authority can contain provisions analogous to Clause (b) of second proviso to Article 311(2) and such a rule will be in public interest and for public good. Article 81(b) of the Kendriya Vidyalaya Rules contains a provision similar to or based on Clause (b) of second proviso to Article 311(2). While Clause (b) of second proviso to Article 311(2) dispenses with any kind of inquiry, Article 81(b) contemplates a summary enquiry. While Clause (B) of second proviso to Article 311(2) dispenses with an inquiry in all cases where the authority is satisfied that it is not reasonably practicable to hold such inquiry, Article 81(b) is made applicable only to cases where the employee is *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student. Therefore, Article 81(b) providing for dispensation of a regular enquiry if the Commissioner is satisfied that it is not reasonably practicable to hold an enquiry, is not arbitrary or unreasonable.

12. The next question is whether the ground mentioned in Article 81(b) for dispensing with a regular enquiry (that is, employee being found *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student) can be said to be a case where it is reasonably impracticable to hold a regular enquiry. This is answered in Avinash Nagra's case, *supra*, where the appellant's services as a post-graduate teacher under Navodaya Vidyalaya was terminated during the period of probation, without holding a regular enquiry, by giving salary in lieu of notice on the ground of improper conduct with a girl student. The writ petition filed by the appellant challenging the termination, was dismissed by the High Court. The appellant approached the Supreme Court contending that a regular enquiry with opportunity to cross-examine the girl student and other witness was necessary, before he could be punished by way of termination. As in this case, the provisions of the CCS (CCA) Rules, 1965 of Government of India applied to the employees of Navodaya Vidyalaya. With a view to ensure the safety and security of girl students, and to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of teachers resulting in sexual harassment, a resolution had been passed prescribing a special summary procedure, in regard to complaints relating to sexual/harassment, which was published in the form of a notification (which is similar to Article 81(b) considered by us). The Supreme Court passed an interim order directing the

management to issue a show-cause notice to the employee, conduct summary enquiry and submit a report. In pursuance of it, the management issued a show-cause notice and made available statements of the girl student and her roommates and the attender which had already been recorded, to the appellant and after considering the entire record and the explanation given by the appellant, drew up a report and submitted it to the Court with a finding that the employee concerned was guilty of moral turpitude involving sexual harassment of the girl student. Thereafter, the appeal was heard and dismissed by the Supreme Court holding that in such circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. Furnishing the statements of witnesses to the appellant and giving of an opportunity to the appellant to controvert the correctness thereof, was considered as sufficient compliance with the requirement to give an opportunity. The Supreme Court observed:

""It would thus be seen that in a given situation, instead of adopting the regular procedure under the rules to terminate the services of an employee, the notification prescribes the procedure to dispense with such enquiry, subject to the conditions mentioned above. The question is whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the rules or the principles of natural justice? In the circumstances, it is very hazardous to expose the young girls to tortuous process of cross-examination..... Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rule and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice".

(emphasis supplied)

The Supreme Court in Avinash Nagra's case, supra, thus accepted the position that in matters relating to any sexual offences, sexual harassment or misbehaviour by teachers/staff, where the victims are students, it is not reasonably practicable to hold an enquiry and therefore, regular enquiries can be dispensed with. But, an allegation of sexual misbehaviour does not lead to an automatic or mechanical dispensation of a regular enquiry. Each matter will have to be examined with reference to facts and a decision has to be taken as to whether regular enquiry should be dispensed with or not.

13. Article 81(b) does not dispense with the observance of the principles of natural justice. It only provides for dispensation of a regular enquiry under the CCS(CCA) Rules before terminating the services of an employee, on fulfilment of the following conditions:

(i) The Commissioner shall be satisfied after a summary enquiry, as he deems fit proper and practicable in the circumstances of a case, that a member of Kendriya Vidyalaya is, prima facie, guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student;

(ii) The Commissioner shall be of the opinion that it is not expedient to hold a

regular enquiry on account of the serious embarrassment likely to be caused to the students or their guardian or such other practical difficulties; and

(iii) The Commissioner shall record, in writing, the reasons under which it is not reasonably practicable to hold such an enquiry and also keep the Chairman of the Sanghathan informed of the circumstances leading to such termination of service.

Compliance with principles of natural justice does not require holding a full-fledged regular enquiry in all situations and circumstances. In extraordinary situations where it is reasonably impracticable to hold a regular enquiry, a summary enquiry will be adequate compliance of principles of natural justice. Article 81(b) dispenses with a regular enquiry only in such an extraordinary circumstance.

14. Article 81(b) has the following in-built safeguards against arbitrariness and misuse.--(a) The power to terminate is given only to the Commissioner, who is the highest executive of the Sanghathan; (b) The Commissioner is required to hold a summary enquiry and satisfy himself that the employee is, prima facie, guilty of moral turpitude involving any sexual offence or exhibition of immoral behaviour with? any student; (c) The Commissioner has to record his opinion, in writing, that it is not expedient to hold a regular enquiry in view of serious embarrassment to be caused to students or their parents or similar other practical difficulties; and (d) The Commissioner should keep the Chairman of the Sanghathan informed of such action. The dispensation of a regular enquiry in the cases mentioned in Article 81(b) cannot therefore be considered as violative of Article 14 or 16. We therefore hold that Article 81(b) is valid and constitutional.

15. Re: Point (ii).--The learned Counsel for the respondent relied on the following observations in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., :

"While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd amendment."...

"... It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it."....

"Hence, it has to be held that when the Inquiry Officer is not the disciplinary

authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice".

16. The Sanghathan is a "State" within the meaning of that expression in Article 12 of the Constitution of India. As such, it cannot adopt a policy of hire and fire. It cannot resort to termination simpliciter, as a means of getting rid of the service of selected employees. If an employee is being terminated for any misconduct, more so a teacher, on an allegation that he is guilty of a serious misconduct involving immoral sexual behaviour with the students, it will stigmatise the employee forever and would permanently bar him from securing any future employment. There can be no two views about the position that the conduct of a teacher dealing with young students should be in loco parentis and exemplary, and he cannot be permitted to continue as a teacher if there are any serious allegations of immoral sexual behaviour towards the students. But, there can also be no two views about the position that before being branded as guilty of sexual misbehaviour and removed from service, a teacher should at least have an opportunity to show cause in the matter.

17. As the CCS (CCA) Rules, 1965 are made applicable to the employees of the Sanghathan, in normal circumstances, a regular enquiry as contemplated under the said rules has to be held, before imposing a major punishment. A regular enquiry contemplates the employee being made known of the charges against him and extending a reasonable opportunity to defend himself. A reasonable opportunity in the context of a regular enquiry means:

(a) An opportunity to the employee to deny the charge of guilt and establish his innocence. (This presupposes that he is informed of what the charges are and the allegations on which such charge is based).

(b) An opportunity to defend himself which include opportunities to go through the documents produced by the management, to call for the production of any document from the management which is in his favour or produce documents on which he relies on, to cross-examine the witnesses of the management and to examine himself and/or any witness in support of his defence.

(c) An opportunity to show cause against the finding recorded against him in an inquiry report, by receiving a copy of such report, if the inquiry is conducted by someone other than the disciplinary authority.

18. Article 81(b) provides for dispensing with a regular enquiry contemplated under the CCS (CCA) Rules, if after a "summary enquiry, as he deems proper and practicable" the Commissioner is satisfied that the employee is *prima facie*

guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour. But, what is a summary enquiry? A summary enquiry is an expedited enquiry accomplished through simplified procedure without the formalities attached to an elaborate or regular enquiry. It does not however mean receiving and considering a report against an employee and passing an order holding an employee guilty of a grave charge, without informing the employee what the charges are and without giving an opportunity to him to deny the charges or show cause against the prima facie findings in the report. In the context of Article 81(b), a summary enquiry is gathering of evidence by way of statements from the complainant/s and/or the witnesses and making available the same or purport thereof in the form of a report along with the charge, to the concerned employee and giving an opportunity to show cause. No process of collecting evidence and assessing its effect can be called an "enquiry", either regular or summary, unless the person against whom it is held is permitted to participate in it or at least given an opportunity to deny the charge or show cause against the material proposed to be used against him. A preliminary enquiry is not a "summary enquiry". Use of the words "summary enquiry" as he deems proper and practicable does not entitle the authority empowered to dismiss or remove an employee, to dispense with the need to give an opportunity to deny the charge or have his say in regard to evidence. 19. Re: Point (iii).--In this case, an enquiry has been held by the Assistant Commissioner by recording statements of affected students and/or other witnesses. According to petitioners, the material so collected clearly and prima facie establishes an act of moral turpitude on the part of the respondent involving sexual offence/exhibition of immoral sexual behaviour with students. But, merely collecting statements from the students or parents or witnesses does not amount to a summary enquiry, but only amounts to a preliminary investigation. Unless the charge is made known to the employee and the statements recorded or an abstract thereof is made available to the employee and is given an opportunity to deny the charge or show cause as to why such material or report should not be acted upon, the action will remain a preliminary investigation and not a summary enquiry. In this case, admittedly the charge against the respondent is not made known to him with an opportunity to deny it. None of the complaints or statement of the students or their parents or others, which led to the conclusion that the respondent is guilty of an act of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour were furnished to the respondent, nor was he given an opportunity to show cause in the matter. Therefore, the summary enquiry contemplated under Article 81(b) is not completed. Consequently, the order dated 18/22-5-2001 of the Commissioner holding that he is satisfied that the respondent is guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour, is illegal and invalid.

20. The term "summary enquiry" occurring in Article 81(b) cannot be interpreted as denying any kind of opportunity to show cause to an employee, as contended by the petitioners. Apart from the fact that such an interpretation is unwarranted

by the wording of the rule, it will give room to misuse of the provision, to get rid of any employee by dubbing him to be a sexual pervert or a person guilty of moral turpitude. In this case the Commissioner at New Delhi, has passed the order of termination. He has not held a summary enquiry. He has merely acted on the report of the Assistant Commissioner based at Bangalore. The incident/s allegedly occurred in Kudremukh. The respondent has specifically alleged mala fides against the Chairman of the local Kendriya Vidyalaya. If the Commissioner does not even hear or grant an opportunity to the employee to deny the charge or show cause in regard to evidence collected, there will be violation of Article 81(b) which requires a summary enquiry. Further, giving an opportunity to the respondent to show cause or giving him a personal hearing will in no way embarrass the students or their parents, nor will it delay the proceedings. The termination under Article 81(b) being an exception to the general rule, the requirements thereof should be strictly followed.

21. We find that the Tribunal has rightly held that the basic principle of natural justice, that is giving an opportunity to show cause cannot be dispensed with. All that we have to clarify is that reservation made to the Sanghathan to take action will not require the Sanghathan to hold a regular enquiry permitting cross-examination of the complainant/s or witnesses of the management. It will be sufficient if opportunity as contemplated in Avinash Nagra's case, supra, is given, if it wants to take further action, that is, issue a show-cause notice containing the charge and the facts in support of the charge together with the statements recorded in the preliminary enquiry and the findings of the preliminary enquiry and give an opportunity to the respondents to submit his explanation and thereafter consider the same and pass appropriate orders. In that event it is open to petitioners to keep the respondent under suspension till the process is completed.

22. With the above clarification, we dispose of this petition, as no ground is made out to interfere with the order of the Tribunal.